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**OFFICE OF PETITIONS**

In re Application of	:	
Hasegawa et al.	:	
Application No. 09/774,781	:	DECISION ON APPLICATION
Filed: January 30, 2001	:	FOR
Atty Docket No. 9281-3917	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)," filed August 22, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to six hundred two (602) days.

The application for patent term adjustment is **DISMISSED**.

On June 1, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 22, 2005, applicants timely submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is six hundred two (602) days. Applicants assert entitlement to a patent term adjustment on the basis that the first Office action was a restriction requirement mailed January 26, 2004, fourteen months and 667 days after the filing date of the application.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history confirms that the Office mailed a first action under 35 U.S.C. 132 on December 31, 2002. In this case, the subsequent re-mailing of the Office action on January 26, 2004 does not alter the date used in calculation of the period of adjustment. The record reveals both notices were mailed to the correspondence address of record, as provided in the declaration for patent. However, applicants did not receive the properly addressed Office action mailed December 31, 2002. Pursuant to a decision withdrawing the holding of abandonment, the Office action was re-mailed on January 26, 2004. The record supports a conclusion that this re-mailing was not due to any error on the part of the Office in mailing the first Office action to applicants. Thus, the re-mailing of the Office action did not constitute an additional delay by the Office in the issuance of the patent within the meaning of 35 U.S.C. 154(b).

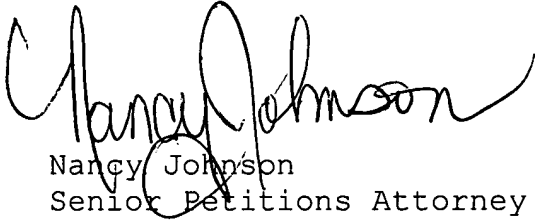
Under these circumstances, for purposes of calculating patent term adjustment pursuant to 37 CFR 1.703(a)(1), the date of mailing of a first action under 35 U.S.C. 132 is December 31, 2002. This is within 14 months of the filing date of the application, January 30, 2001. Thus, there are no grounds for entry of a period of adjustment pursuant to 1.702(a)(1).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is zero (0) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions